

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 773 OF 1997

Ram Krishna Belavalkar

...Appellant

V/s.

The State of Maharashtra

...Respondent

.....

Mr. Tushar N. Sonawane, for the Appellant.

Mr. P. H. Gaikwad, APP for the State.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 6th DECEMBER, 2021

P. C. :

. By this appeal under Section 374 of Criminal Procedure Code, 1973, the Appellant has assailed the Judgment and Order dated 4th December 1997 in Sessions No.20 of 1996, Ratnagiri.

2. By the impugned Judgment, learned Sessions Judge, Ratnagiri has held the appellant (hereinafter referred to as the accused) guilty of offence under Section 376 and 506 Part (II) of Indian Penal Code (for short 'IPC'). He has been sentenced to undergo rigorous imprisonment for four years with fine of Rs.1,000/- in default rigorous imprisonment for a period of six months for offence under Section 376 and rigorous imprisonment for one year with fine of Rs.300/- in default to

suffer rigorous imprisonment for a period of two months.

3. In brief, the case of the prosecution is that sometime in the month of September-1995 the accused subjected the prosecutrix (PW2) to rape under threat of death. Pursuant to the F.I.R. lodged by the prosecutrix, PW7-Mr. Shivaji Shelar, Assistant Police Inspector attached to Sangmeshwar Police Station registered Crime No.83 of 1995 under Sections 376 and 506 of Part II of I.P.C. He referred the prosecutrix for medical examination, recorded statement of the witnesses, conducted scene of offence Panchnama, arrested the accused and seized cloths of the prosecutrix and the accused. Upon completion of the investigation he filed the charge sheet.

4. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case examined seven witnesses. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.'). The defence of the accused is that of total denial. The learned Sessions Judge, upon appreciating and analyzing the evidence, has held that the prosecutrix was 18 years of age at the time of the incident. The learned Sessions Judge further held that the evidence of the prosecutrix amply proves that the accused had initially had sexual intercourse with her under threat to kill and later, on two different occasions with promise of marriage. The learned Sessions Judge thus, observed that the evidence on record indicates

that the accused “must have” obtained consent of the prosecutrix under the promise of marriage and threats to kill. Based on these findings, the learned Judge has held the accused guilty of offence under Section 376 and 506 (Part II) of the IPC and sentenced him as stated above. Being aggrieved by the Judgment, the accused has preferred this appeal.

5. Heard Mr. Tushar Sonawane, learned Counsel for the applicant and Mr. P. H. Gaikwad, learned APP for the State. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties.

6. The learned Sessions Judge has observed that the prosecutrix was above 18 years of age. Hence, the question for determination is whether the accused had sexual intercourse with the prosecutrix against her wish and without her consent.

7. The evidence of PW-2 prosecutrix indicates that she knew the accused since long. She has deposed that she had taken the cattle for grazing. The accused had also brought his goats for grazing. She has stated that the accused pressed her mouth and threw her on the ground, removed her underwear and had sexual intercourse with her. She has deposed that she shouted for help but the accused showed her a knife and threatened to kill her. She did not disclose the incident to her mother or any other person due to fear.

8. She claims that about a week later, when she had taken her

cattle for grazing, the accused once again had sexual intercourse with her under the promise of marriage. The accused once again had sexual intercourse with her at a place called 'Ambi'. She missed her menstrual cycle and she informed the accused about the same. She did not inform her parents about her pregnancy but went with the accused to the Hospital of Dr. Rilkar at Chiplun. The Doctor confirmed her pregnancy and they told the Doctor to terminate the pregnancy and signed the consent form at Exh.8. She did not disclose the termination of pregnancy to her mother. Subsequently, the accused did not maintain relationship with her and refused to marry her.

9. Though the prosecutrix had claimed that the accused had pointed a knife and threatened to kill her, no such statement was made in the FIR. The evidence of the prosecutrix also reveals that she had sexual intercourse with the accused repeatedly. She had informed the accused that she was pregnant and had accompanied the accused to Chiplun to terminate the pregnancy. The evidence of PW2 clearly indicates that her relationship with the accused was consensual and that she had lodged the F.I.R. only because the accused had refused to marry her. She has admitted in her cross-examination that the accused was a married man. It is therefore, evident that the prosecutrix did not have sexual relationship with the accused under misconception of fact. The learned Judge has observed that the accused must have given threats and that he must have obtained her consent by

promising to marry her. Needless to state the conviction cannot be based on surmises or conjectures. It is the fundamental principle that the prosecution has to establish the guilt of the accused beyond reasonable doubt and suspicion however strong can not take place of proof.

10. Under the circumstances, the impugned Judgment and Order cannot be sustained, hence, the appeal is allowed. The impugned judgment and order is set aside. The accused is acquitted of the offences under Sections 376 and 506 Part II of Indian Penal Code. Bail bonds stand discharged. The fine amount, if paid be refunded to the accused.

(SMT. ANUJA PRABHUDESAI, J.)